

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department – Telangana State – Bhadradri Kothagudem District – Revision Petition filed by Sri Koyalamudi Koteswara Rao, S/o. Late Satyanarayana R/o. H.No.50, Sitarampuram (V), Dummugudem (M), Bhadradri Kothagudem District against orders of the Additional Agent to Government, Bhadrachalam in C.M.A. No. 19/2015, dated 24.03.2020 in respect of land admeasuring an extent of Acs. 3-40 Cents in Sy.No.59/4 of Nadikudi (V), Dummugudem (M), Bhadradri Kothagudem District – DISMMISED – Orders – Issued.

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No. 2

Dated: 02-03-2024,
Read the following:-

1. Orders of Agency Divisional Officer & Sub Collector, Bhadrachalam in LTR case No.A/37-518/2013/BCM, dated 31.08.2013.
2. Orders of the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam in CMA No.19/2015, dated 24.03.2020.
3. Revision Petition filed by Sri Koyalamudi Koteswara Rao, S/o.Satyanarayana(Late), R/o.Sitarampuram (V),Dummugudem (M), Bhadradri Kothagudem District, dated 04.06.2020.
4. Govt.Memo.No.515/TW.LTR/2020, dated 24.06.2020, 25.08.2020, 21.09.2020, 08.01.2021
5. Orders of the Hon'ble High Court for the State of Telangana in WP.No.9217 of 2020, dated 29.06.2020.
6. Orders of the Hon'ble High Court for the State of Telangana in WP.No.10776 of 2020, Dated 19.01.2023.
7. Govt. Notice.No.515/TW.LTR/2020, dated 08.01.2021.
8. From the Addl.Agent to Govt., Bhadrachalam, letter Rc.No.A3/3992/2020/LTR (RP No.515/LTR/2020), dated 22.01.2021.
9. Counter filed by the Tahsildar, Dammugudem on 23.01.2021.
10. Written arguments filed by the Counsel of Revision petitioner on 09.02.2021.

&&&&

ORDER:

In the reference 3rd read above, Sri Koyalamudi Koteswara Rao, S/o. Satyanarayana (Late), R/o.Sitarampuram (V), Dummugudem (M), Bhadradri Kothagudem District has filed the Revision petition through his Counsel before the Government on 05.06.2020 against orders of the Additional Agent to Government, Bhadrachalam in C.M.A. No. 19/2015, dated 24.03.2020 in respect of admeasuring an extent of Ac-3-40 Cents in Sy.No.59/4 of Nadikudi (V), Dummugudem (M), Bhadradri Kothagudem District.

2. The history of the case is that the Agency Divisional Officer & Sub-Collector, Bhadrachalam had initiated suo-motu LTR proceedings vide case No.A/37-518/2013 against non-tribal respondent Koyalamudi KoteswaraRao R/o Nadikudi (v), Dummugudem Mandal for illegal occupation of Government land admeasuring an extent of acs.3.40 cents in Sy.No.59/4 in Nadikudi village of Dummugudem Mandal in contravention of provisions of law under the Land Transfer Regulation. The case was disposed of by the authority on 31.8.2013 in the reference 1st read above, with the following findings:

- Non-Tribal Respondent was present on 31.8.2013 and submitted documents i.e. Proceedings of the Joint Collector, Khammam, Pahani of 1422, Land Revenue Receipts for Fasli years 1400, 1401, 1409, 1410, 1412, 1413, 1415, 1416, 1417, 1418. He claimed that he had been in cultivation of the said land for a long time prior to 1970.
- Land is clearly Government land vide admission of respondent himself.
- Adangal copy submitted by respondent mentions the land as 2(A) in Pattadar and enjoyer as well.

(Contd...2)

- Respondent submitted proceedings of Joint Collector, Khammam dated 20.12.94, wherein the protection proceedings issued by then Tahsildar were cancelled. It is thus clear that the respondent was in possession of government land against all provisions.
- The oldest document submitted by the respondent belongs to 1990. Thus, he failed to submit any piece of evidence indicating his possession prior to 1970.
- Having failed to establish his possession over the said land with a proper title, the respondent is an illegal occupant of the said land. In the absence of any title over the said land, the court is forced to believe that a violation of 3 (1 (B) of the APSALTR 1959, wherein it is mentioned that, "unless the contrary is proved, any immovable property situated in the agency tracts and in the possession of a person who is not a member of ST, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of scheduled tribe". Moreover, vide 'Vuppuluri Veera Venkata Raju and others Vs Special Deputy Tahsildar, Tribal Welfare, Gangavaram, East Godavari District; and others; 2007 (5) ALT 418" provisions of regulation therefore even in respect of poramboke land in possession of non-tribal. Person dealing with immovable property being in possession or encroachment or trespass is deemed to be in possession in contravention of section 3(1) (a) of the Act. No other documents were submitted.
- As per the evidence placed before the court, it is proved that the transfer of immovable property belonging to the NT (petitioner herein) was made to the non-tribal in contravention of the sub-section 1 of the section-3 as laid in the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation 1959 read with the Regulation of 1 of 1970 after commencement of the said Regulation and as such it is null and void.
- Therefore, order for ejectment of the non-tribal respondent or whoever is in possession of the immovable property be taken into Government custody under cover of panchanama and assign the same to the eligible Tribals as per rules in force.

3. Aggrieved by the above orders of the Agency Divisional Officer, Bhadrachalam & Sub-Collector, Bhadrachalam, the appellant Sri Koyalamudi Koteswara Rao, S/o. Satyanarayana (Late), R/o. Sitarampuram (V), Dummugudem (M), Bhadrachalam District had submitted the Appeal before the appellate authority i.e. Additional Agent to Government, Bhadrachalam which was numbered as CMA No.19/2015 and disposed on 24.3.2020 in the reference 2nd read above, with the following findings:

Findings

- i) Appellant is claiming schedule property from forefathers and succeeded by way of inheritance as legatees and in possession and enjoyment since past (50) years to till today.
- ii) As seen from the pahani extract for the Fasli 1422 (2012-13) of Nadikudi village filed by the appellant, Sy.No.58/4 extent ac.1.96 cts is a Government 2-A land as entered in pattadar and enjoyer column.
- iii) The documents submitted by the appellant are no way useful to establish his claim. Land Revenue records do not have credibility, legal sanctity and value in the eye of law.
- iv) It is a clear case of encroachment of Government land by non-tribal and clear violation of LTR. It is evident from the lower court that the Respondent (appellant herein) himself admitted the land is Government land. He failed to submit any piece of evidence indicating his possession prior to 1970.
- v) Hence, lower court orders were upheld.

(Contd...3)

4. Aggrieved by the orders of Additional Agent to Government, Bhadrachalam, Sri Koyalamudi Koteswara Rao, S/o. Satyanarayana (Late), R/o. Sitarampuram (V), Dummugudem (M), Bhadradi Kothagudem District has filed the present Revision Petition before the Government on 5.6.2020 in the reference 3rd read above, urging the following grounds.

- i) The impugned orders are contrary to law and probabilities of the case.
- ii) Section 3 of the AP Scheduled Areas Land Transfer Act 1/59 and its Amendment 1/70 provides that in the Scheduled Areas transfer of immovable property in favour of Non-tribe by Scheduled Tribe is totally prohibited. If any transfer taken place after 3-2-1970 between Tribe and Non Tribe, the said transfer is null and void and the Authorities constituted under Regulation Act can restore the lands to the transferor by following the procedure. It is submitted that in the instance case *Suo Moto* proceedings were taken up by the Agency Divisional Officer. There is no transfer between tribe and non-tribe in the instant. It is the case that the land belongs to Government has been encroached by the petitioner and accordingly LTR case was initiated. The entire objection of Section 3 of Land Transfer Regulation is only to see that no land belongs to ST is to be transferred in favour of non-tribe and if any transfer takes place, the said lands are to be restored to the tribe by the Authorities constituted under the Regulation. Therefore, initiation of proceedings is illegal.
- iii) It is the settled principle of law that if any Government land is under encroachment by any person, the Government got power to evict the said persons by invoking provisions under the Land Encroachment Act which is specifically meant for that purpose. Contrary to the spirit of Section 3, Land Transfer Case has been initiated and the Authority has no power and jurisdiction to deal with the said issue and accordingly the entire proceedings are void ab initio.
- iv) Even otherwise it is mandatory duty on the part of the Authority to conduct enquiry in respect of history and nature of the land in question. In the instant case the lands are in cultivation and in possession prior to 1960 since the land in question is given as Pasupu Kumkuma given to the mother of the petitioner as per the promise made by her father at the time of marriage. It is settled principle of law that the Inter-State successor got exemption under the provision of LTR Regulation. Father or mother can transfer their land in favour of daughters and sons and there is no prohibition in the entire regulation. In addition to the above, any transfer has taken place only after 3.2.1970 between tribe and non-tribe, then only the authority constituted under the Regulation can initiate proceedings based on information. In the instant case since the father transferred land in favour of daughter prior to 1970's the authority under Regulation 1/70 have no jurisdiction to entertain the LTR case and thereby all the orders passed by the primary and appellate authorities are illegal.
- v) Either the Primary Authority or Appellate Authority failed to consider the grounds raised in the Appeal and thereby treated the appeal as an empty formality. It is settled principle of law that the appeal orders should be the Speaking Orders considering the grounds raised therein. Once the appeal order is perused, it establishes that the appellate authority not considered any of the grounds raised and accordingly the appellate authority's order is illegal and non-speaking.

- vi) Keeping in view of the long standing possession of the petitioner the competent authority i.e. Settlement Officer and Revenue Divisional Officer granted Rythuvari Patta in the year 2018 for the same lands which grot over riding effect over the proceedings initiated under LTR proceedings. Hence, the orders of the Revision are to be declared as illegal and arbitrary.
- vii) The petitioner reserves the right to file additional grounds at the time of arguments with the leave of the Government.

5. Along with the Revision Petition, the Revision Petitioner has also filed Affidavit and IA praying to suspend operation of orders passed by the Additional Agent to Government, Bhadrachalam in CMA No.19/2015, dated 24.3.2020 communicated on 20.5.2020 and orders of the Agency Divisional Officer, Bhadrachalam in LTR case No.A/37-518/13/BCM, dated 31.8.2013, pending disposal of the Appeal.

6. In the reference 4th read above, Government while admitting the Revision Petition has rejected the Stay Petition and communicated copy of the Revision Petition to the Additional Agent to Government to submit para-wise remarks along with connected case record.

7. The Revision Petitioner Sri Koyalamudi Koteswara Rao, S/o Satyanarayana (late) has filed WP No.9217 of 2020 before the Hon'ble High Court for the State of Telangana at Hyderabad praying to issue a Writ, Order or direction more in the nature of Mandamus declaring the action of the 4th Respondent (Government) in not disposing the Appeal along with Stay Application filed against the orders passed by the 3rd and 2nd respondents in CMA No.19/2015, dated 24.03.2020 communicated on 20.5.2020 and the orders in LTR case No. A/37-518/2013-Bhadrachalam, dated 31.8.2013 for eviction from the land situated in Sy.No.58/4 to an extent of 3 acres 40 cents situated at Nadikudi village of Dummugudem Mandal, Bhadradi Kothagudem, and interfering in the possession and enjoyment of the land as illegal, arbitrary and violates Article 14, 19 and 21 of the Constitution of India and consequently direct the respondents to forthwith dispose the Revision with a direction not to interfere with possession and enjoyment till the disposal of the same.

8. The Hon'ble High Court have dispose the WP 9217 of 2020 on 29.6.2020 in the reference 5th read above, operative part of the order is reproduced below:

"6. Having regard to the submissions made as above and considering the fact that the petitioner has already filed revision application before the 4th respondent authority against the order passed by the 3rd respondent authority within the time permitted under the Regulation and also having files stay application seeking stay of operation of the impugned order in the revision preferred, this Court is of the view that the 4th respondent authority can be directed to dispose of the stay application filed by the petitioner within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner. Till such time the 4th respondent takes up the stay application for hearing and adjudicate thereon within the time mentioned herein above, the 1st respondent authority viz., Tahsildar, shall not take any further steps to give effect to the orders of the 3rd respondent authority passed in CMA No.19/2015.

7. Subject to the above direction, the Writ Petition is disposed of. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order."

9. Aggrieved by the decision of Government in Government Memo dated 24.6.2020, the Revision Petitioner Sri Koyalamudi Koteswara Rao has filed WP No.10776 of 2020 before the Hon'ble High Court for the State of Telangana at

(Contd...5)

Hyderabad praying to issue interim direction suspending operation of the orders passed by the Government in Memo. No.515/TW/LTR/2020, dated 24.6.2020 rejecting the Stay Application filed against the CMA No.19/2015, dated 24.3.2020 and LTR case No.A/37-518/2013 dated 31.8.2013 for eviction from the lands to an extent of 2.40 acres in Sy.No.49/4 situated at Nadikudi village, Dummugudem Mandal, Bhadraddri Kothagudem District, pending disposal of WP No.10776 of 2020, on the file of the High Court. The Hon'ble High Court while directing issue of Notice has granted interim direction as prayed for on 21.7.2020.

10. The Hon'ble High Court have dispose the WP 10776 of 2020 on 19.1.2023 in the reference 6th read above, directing the 4th respondent (i.e. Government) to dispose of the revision petition in accordance with law after giving opportunity to the respective parties therein, within a period of three (3) months from the date of receipt of copy of this order. Till such time, the respondents are directed not to take any coercive steps against the petitioner in respect of subject land to an extent of ac.3.40 cents in Sy.No.59/4 situated at Nadikudi Village, Dummugudem Mandal, Bhadraddri Kothagudem District.

11. In the reference 7th read above, Government have issued the notices to the concerned parties to attend the hearing scheduled on 23.01.2021. Counsel for Revision Petitioner Sri PV Ramana present and prayed for (2) weeks' time for submission of written arguments. Time granted. The Senior Assistant O/o.Tahsildar, Dummugudem present with the record and submitted counter of Tahsildar, Dummugudem. Counsel for Revision Petitioner filed written arguments on 10.2.2021.

12. In the reference 8th read above, the Addl.Agent to Govt., Bhadrachalam, has furnished the parawise remarks and connected record in CMA No.19/2015.

13. Gist of Counter filed by Tahsildar, Dummugudem on 23.1.2021 is as follows:

- i) The main contention of the Revision Petitioner is that his family is in possession of land more than 50 years and the said possession is valid through inheritance. The 2nd respondent (Agency Divisional Officer, Bhadrachalam) not properly observed and passed ejectment orders and the 1st Respondent (Addl.Agent to Government, Bhadrachalam) also passed ejectment orders.
- ii) The land is situated in scheduled area and the Government under Ryotwari Settlement Regulation (Regulation 2/70) surveyed the land, granted pattas as per Rules made under Regulation 2/70. As per his contention, he must have Settlement Patta for the land in his possession, but he is not having any Settlement Patta and therefore, his possession is not lawful for which he is liable for eviction.
- iii) It is true that as per Regulation 1/59 as amended by Regulation 1/70 transfer of immovable property is prohibited between two non-tribals after 3.2.1970. It is also true that the 2nd respondent (Agency Divisional Officer, Bhadrachalam) had taken up suo-motu case and passed orders. The Revision Petitioner is not having patta and is in possession of Government land. Being a non-tribal, the revision petitioner is not entitled to continue illegal possession of Government land in scheduled area. It is not correct to say that Section 3 of the LT Regulation will not apply to Government lands. As per Section 3(1)(1) and 2 (g) of amended Regulation 1/70, occupation of Government land by non-tribal will come under the purview of transfer.. Even the lands classified as Government "PORAMBOKU (2-A LAND)" land in possession must be said to be dealing with immovable property falling within the scope of transfer as defined under Section 2 (g) of Regulation. The provisions of Regulation apply even in respect of Government lands in possession of non-tribal person dealing with

immovable property being in possession (or) encroachment (or) trespass is deemed to be in possession and in contravention of Regulation. As such, if a non-tribal is in possession of Government land, it is deemed to be dealing with immovable property. The Hon'ble High Court in Uppuluri Veera Venkata Raju and others V/s Special Deputy Tahsildar (Tribal Welfare, Gangaram), East Godavari District held and reported in 2007 (5) ALT 418 (p.3).

- iv) It is not correct to say that contrary to specific section, LTR case has been initiated for the Government land. If the non-tribal is in possession of land in scheduled area without having patta, Government may initiate action under Land Transfer Regulation.
- v) The contention of the Revision Petitioner is that the lands are in continuous possession prior to 1960 since the land in question is given as Pasupu Kumkuma to her mother at the time of her marriage. The question is whether the petitioner got settlement patta or not. Admittedly, he has no settlement patta nor he produced any valid document before the 1st and 2nd respondents. If their family is in possession of land prior to 1960, they would have been granted settlement patta under Regulation 2/70. Further, Pasupu Kumkuma is a compulsorily registerable document and without registration any title or right will acquire. When the revision petitioner's mother or her father is not having any valid title, consequently the revision petitioner also will not have any right to succeed over the Government land. The possession of Revision Petitioner purely comes under the purview of transfer defined in the Regulation.
- vi) The 2nd respondent (Agency Divisional Officer, Bhadrachalam) clearly stated in his orders that the protection certificate issued by Tahsildar, Dummugudem was cancelled by the Joint Collector in the year 1994. It clinchingly proves that he has no patta but in possession of Government land.
- vii) The contention of the Revision Petitioner is that the Settlement Officer and Revenue Divisional Officer granted ryotwaripatta in the year 2018 but he failed to produce the same when the 1st respondent passed orders on 24.3.2020. The Settlement was completed long back. The Revision Petitioner obtained Protection Certificate from Tahsildar, Dummugudem which was cancelled by the Joint Collector - so he has no settlement patta at all.
- viii) As regards other contention that initiation of LTR case is not correct, the Government can take action either under LT Regulation or under Land Encroachment Act. The Revision Petitioner cannot force the respondents to take action as deserved by him.

14. Gist of Written Arguments filed by the Counsel for Revision Petitioner is as follows:

- i) The land to an extent of acs.4.45 guntas situated in Sy.No.59/4 at Nadikudi village of Dummugudem Mandal was given to mother of revision petitioner as Pasupu kumkum at the time of her marriage by her father more than 70 years back. Thereafter, his mother and father continued in Revenue Records prior to 1970 and thereafter his mother name continued. After death of his father, his name continued in possession and enjoyment column. They are continuously cultivating the land by raising various crops.
- ii) Suo Moto LTR case No.A/37-518/2013 was taken up at the instance of Tahsildar under APSALTR without there being any transfer from one non tribe to another non tribe after 3.2.1970. There is no material or evidence to show that the transfer of immovable property was taken place after 3.2.1970 and in the absence of such evidence the case is illegally registered against the petitioner.

(Contd...7)

- iii) As per Full Bench decision of the Hon'ble High Court reported in AIR 1982 AP Page-1, initiation of any LTR case in respect of transfer of immovable properties prior to 3.2.1970 by the authorities constituted under Regulation 1/59 or its amendment 1/70 are not competent. Notice issued for ejectment of land to an extent of ac.3.40 cents is served. The petitioner submitted reply stating that the said land is in their for more than 70 years and they are regularly paying land revenue, their names appeared in the Fasli 1400, 1401, 1409, 1410, 1412, 1413, 1415, 1416, 1417 and 1418. The petitioners are landless poor persons and not purchased the land from any non-tribe after 3.2.1970. Without considering the explanation in a proper perspective, the Agency Divisional Officer passed the order of ejection on 31.8.2013. The petitioner filed an Appeal No.CMA No.19/2015 before the 1st Respondent and raised various legal and factual grounds. The said authority without passing any reasoned order and without there being justification rejected the appeal on 24.3.2020 and communicated to the petitioner on 20.5.2020 in the COVID period.
- iv) The properties acquired by inheritance or by succession cannot come under the purview of Scheduled Area Land Transfer Regulation. Definition clause of "Immovable Property" "Transfer" provided exemption for such acquisition of properties under Scheduled Area. There is no prohibition for transferring the land from the parents. His mother got the land as Pasupu Kumkuma from her father at the time of marriage prior to 1970. Therefore, the question of initiation of LTR proceedings keeping in view of Full Bench Judgement reported in AIR 1982 AP Page-1 is without power, authority and jurisdiction.
- v) The question of conducting panchanama for implementation of the orders also equally illegal. As per Rules issued under Scheduled Area Land Transfer Regulation, unless there is an Execution Petition filed, the question of conducting Panchanama and eviction does not arise. Even the Sada Sale Deed entered prior to 1970 also cannot be examined by LTR authorities keeping in view of the law laid down by the High Court. The judgement in this regard 2005 (6) ALT 127 and 1999 (6) ALT 174 are filed in the material papers.

15. Findings:

Upon perusal of the material evidences available on record, grounds and written arguments of petitioner, arguments put-forth by Tahsildar, Dummugudem, according to Section 3 (1) (b) the burden of proving claim lies only with the revision petitioner. Admittedly, the land is Government 2-A (Poramboke) land. The revision petitioner has failed to produce any documentary evidences (i.e. Settlement Patta, gift of land to his mother as Pasupu Kumkuma, revenue records showing names of his father, mother or himself except land revenue receipts which do not suffice) to prove his legitimate right over the schedule property admeasuring acs.3.40 cents in Sy.No.59/4 situated in the agency area i.e. Nadikudi village of Dummugudem Mandal before all the authorities i.e. lower authority Agency Divisional Officer, Bhadrachalam, appellate authority Additional Agent to Government, Bhadrachalam and also before the revisional authority i.e. Government.

16. After careful examination of the matter, and in the absence of any valid documentary evidences, Government do not find any valid reason to keep the case pending any longer before the Government and accordingly the Revision Petition filed by Sri Koyalamudi Koteswara Rao, S/o. Satyanarayana (Late), R/o.Sitarampuram (V), Dummugudem (M), Bhadradi Kothagudem District is DISMISSED duly upholding orders of the lower and appellate authorities i.e Agency Divisional Officer, Bhadrachalam in LTR case No.A/37-518/2013, dated 31.8.2013 and the Additional Agent to Government, Bhadrachalam in CMA No.19/2015, dated 24.3.2020 respectively.

(Contd...8)

17. The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr.A.SHARATH,
SECRETARY TO GOVERNMENT.

To

The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam,
Bhadradri Kothagudem District (By RPAD)

The Agency Divisional Officer & Sub-Collector, Bhadrachalam,
Bhadradri Kothagudem District (By RPAD)

Sri Koyalamudi Koteswara Rao, S/o.Satyanarayana (Late),
R/o.H.No. 50, Sitarampuram (V), Dummugudem (M),
Bhadradri Kothagudem District.(By RPAD)
(Through the Tahsildar, Dummagudem Mandal)

Copy to:-

The Agent to Government & Collector and District Magistrate,
Bhadradri Kothagudem District.(By RPAD)

M/S. P.V. Ramana, E.R. Savithri, B.Sravan Kumar, Advocates, Flat No. 1,
Banjara Sangeet Apartments, Kapadiya Line, Hyderabad-82.(By RPAD)

The Tahsildar, Dummagudem Mandal,
Bhadradri Kothagudem District (By RPAD)

(With a direction to serve the copy of GO to concerned parties).

The P.A to Secretary to Government (TW)
SC/SF.

//FORWARDED::BY ORDER//

SECTION OFFICER.